

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EASTERN SAVINGS BANK, FSB,

Index No. CV11-2501

Plaintiff,

- against -

FRANCIS RABITO a/k/a FRANK RABITO, NEW YORK CITY PARKING VIOLATIONS BUREAU, "JOHN DOE #1 through JOHN DOE #12", the last twelve names being fictitious and unknown to plaintiff, the persons or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming interest upon the premises described in the Complaint,

ANSWER TO COUNTERCLAIM

Defendants.
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Plaintiff, EASTERN SAVINGS BANK, FSB, ("Plaintiff"), by its attorneys, KRISS & FEUERSTEIN LLP, hereby responds to the Verified Answer with Counterclaims ("Answer") of Defendant FRANCIS RABITO a/k/a FRANK RABITO, as follows:

AS AND FOR A FIRST COUNTERCLAIM

1. Plaintiff denies the allegations set forth in Paragraph 23 of the Answer and further states that each and every Affirmative Defense asserted by Defendants lacks merit.
2. Plaintiff denies the allegations set forth in Paragraph 24 of the Answer.
3. Plaintiff denies the allegations set forth in Paragraph 25 of the Answer.
4. Plaintiff denies the allegations set forth in Paragraph 26 of the Answer.
5. Plaintiff denies the allegations set forth in Paragraph 27 of the Answer.
6. Plaintiff denies the allegations set forth in Paragraph 28 of the Answer.
7. Plaintiff denies the allegations set forth in Paragraph 29 of the Answer.
8. Plaintiff denies the allegations set forth in Paragraph 30 of the Answer.

9. Plaintiff denies the allegations set forth in Paragraph 31 of the Answer.
10. Plaintiff denies the allegations set forth in Paragraph 32 of the Answer.
11. Plaintiff denies the allegations set forth in Paragraph 33 of the Answer.

FIRST AFFIRMATIVE DEFENSE

12. Defendant's Counterclaim is pre-empted by Federal Law, including but not limited to the Home Ownership and Equity Protection Act of 1994 and The Truth-In-Lending Act.

SECOND AFFIRMATIVE DEFENSE

13. Defendant's Counterclaim directly conflicts with the express terms of the written agreements between the parties, including, but not limited to, Sections 8 and 11 of the Note.

THIRD AFFIRMATIVE DEFENSE

14. Defendant's Counterclaim is barred as Plaintiff reasonably relied upon the information supplied by Defendant and/or his agents and exercised reasonable care in originating the loan to Defendant.

FOURTH AFFIRMATIVE DEFENSE

15. Defendant's Counterclaim is barred by the doctrines of waiver and ratification.

FIFTH AFFIRMATIVE DEFENSE

16. Defendant's Counterclaim is barred by the doctrine of unjust enrichment.

SIXTH AFFIRMATIVE DEFENSE

17. Defendant's Counterclaims are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

18. Defendant failed to give reasonable notice to Plaintiff of its Counterclaim as required by Section 20 of the Mortgage.

EIGHTH AFFIRMATIVE DEFENSE

19. Defendant's defenses and Counterclaim have not been pleaded with the requisite particularity as required by Fed.R.Civ.P. 9.

NINTH AFFIRMATIVE DEFENSE

20. Defendant's Counterclaim fails to state a cause of action.

WHEREFORE, Plaintiff, EASTERN SAVINGS BANK, FSB, demands judgment dismissing all Counterclaims with prejudice and granting Plaintiff all of the relief demanded in the Complaint and such other and further relief that this Court deems just and proper.

Dated: New York, New York
July 12, 2011

KRISS & FEUERSTEIN LLP

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